STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM H. GRAY,

Plaintiff-Appellant,

v

BRONSON METHODIST HOSPITAL, DANIEL LUEBKE, M.D., and KAREN FLYNN, M.D.,

Defendants-Appellees.

UNPUBLISHED
February 22, 2005

No. 252719
Kalamazoo Circuit Court
LC No. B03-000295-NH

Before: Schuette, P.J., and Fitzgerald and Bandstra, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals in propria persona as of right from a trial court order granting summary disposition to defendants. We affirm.

I. FACTS

This case revolves around the medical treatment plaintiff received from defendants on October 5, 2000. Plaintiff's discomfort was diagnosed by defendants Flynn and Luebke as a blood clot/hemorrhoid problem. Plaintiff elected to have immediate surgery upon entering the hospital on October 5, 2000. Following the surgery, plaintiff could no longer control the expelling of gas or bowel movements. On January 1, 2002, plaintiff was incarcerated for home invasion and retail fraud. Once in jail, plaintiff was diagnosed with fecal incontinence. While incarcerated, plaintiff sent two letters to defendant Bronson's legal department, the first letter dated April 27, 2002, and the other dated June 22, 2002—both expressing plaintiff's intent to file suit. On June 10, 2003 plaintiff's complaint was filed with the trial court.

II. NOTICE OF INTENT PURSUANT TO MCL 600.2912(b)

Plaintiff argues that defendants received proper and timely notice of plaintiff's intention to file this medical malpractice lawsuit by virtue of April 27, 2002 and June 22, 2002 letters he sent to defendant Bronson Hospital's legal department. We disagree.

A. Standard of Review

This Court reviews decisions on motions for summary disposition *de novo*. *Roberts v Mecosta Co Gen Hosp (After remand)*, 470 Mich 679, 685; 684 NW2d 711 (2004).

Furthermore, whether plaintiff met the requirements of MCL 600.2912(b) is a question of statutory interpretation also reviewed *de novo*.

B. Analysis

Before commencing a medical malpractice action, a plaintiff is required to provide written notice to the health facility or health professional of an intent to sue. MCL 600.2912b. This notice must include:

> a statement of (1) the factual basis for the claim, (2) the applicable standard of practice or care alleged by the claimant, (3) the manner in which it is claimed that the applicable standard of practice or care was breached, (4) the alleged action that should have been taken to comply with the alleged standard, (5) the manner in which it is claimed that the breach was the proximate cause of the injury claimed in the notice, and (6) the names of all professionals and facilities the claimant is notifying. [MCL 600.2912b(4); see also, *Roberts v Mecosta Co Gen Hosp (After Remand)*, 470 Mich 679, 682; 685 NW2d 711 (2004) ("*Roberts II*").]

Failure to comply with all of these requirements renders the purported notice invalid. *Roberts II, supra* at 682-683.

Here, as in *Roberts II, supra*, 470 Mich at 690, plaintiff's letters "primarily set forth facts demonstrating an unfavorable outcome" and complaining about the manner in which he was treated. Thus; while they "satisfy some of the requirements of § 2912b, they do not satisfy *all* of those requirements." *Id.* (Emphasis in original.) Plaintiff's letters, read together, do not include a statement of the particular standard of care applicable to each defendant, do not include a statement regarding the manner in which defendants breached these alleged standards of care, do not include a statement setting forth the actions that should have been taken by defendants, and do not include a statement regarding the manner in which defendants' breaches of the standard of care proximately caused plaintiff's injury. Therefore, plaintiff's letters to Bronson's legal department, read individually or collectively, do not meet the particularized requirements of MCL 600.2912b(4).

III. STATUTE OF LIMITATIONS

Plaintiff next argues that the trial court erred in dismissing his complaint on statute of limitation grounds. We disagree.

A. Standard of Review

This Court reviews de novo the trial court's grant of summary disposition on statute of limitations grounds, under MCR 2.116(C)(7). *Holmes v Michigan Capital Medical Ctr*, 242 Mich App 703, 706; 620 NW2d 319 (2000).

B. Analysis

Pursuant to MCL 600.5805(6), the period of limitation for a medical malpractice action is two years. MCL 600.5838a(1) provides that "a claim for medical malpractice . . . accrues at the

time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time that the plaintiff discovers or otherwise has knowledge of the claim." Contrary to plaintiff's assertions, then, plaintiff's claim accrued, and the limitations period began to run, on October 5, 2000, the date of the medical treatment underlying his claim. Thus, plaintiff was required to file his complaint before October 5, 2002 and his April 2003 filing was untimely.

Even assuming that plaintiff's letters to defendant Bronson Hospital's legal department constituted a valid notice of an intent to file suit, thus tolling the limitations period for 182 days, the trial court's dismissal of plaintiff's complaint was proper. So extended, the statute of limitations applicable to plaintiff's claims would have expired, at the latest, on Monday, April 7, 2003. MCR 1.108(1). There is no dispute that plaintiff's complaint was not filed with the court on or before that date. Further, because plaintiff filed his complaint without an affidavit of merit, signed by a health professional and meeting the requirements of MCL 600.2912d, the filing of his complaint was insufficient to commence this lawsuit and did not toll the statute of limitations. *Scarsella v Pollak,* 461 Mich 547, 549; 607 NW2d 711 (1998). Therefore, the trial court properly concluded that the limitation period had expired. *Id.*

IV. COURT APPOINTED EXPERT WITNESS

Finally, plaintiff argues that the trial court erred in denying his motion for a court-appointed expert. We disagree.

A. Standard of Review

This Court reviews the denial of such a motion for an abuse of discretion. *In re Attorney Fees of Klevorn Michigan,* 185 Mich App 672, 678; 463 NW2d 175 (1990).

B. Analysis

Michigan Rule of Evidence 706 provides the court with the discretion to appoint an expert, on it own motion or the motion of a party, to be paid for by the parties and chargeable as costs. MRE 706(a), (b). Plaintiff offers no authority for his assertion that the trial court was required to appoint a medical expert to examine him and assist with the preparation of a proper affidavit of merit. A party may not "leave it to this Court to search for authority to sustain or reject its position." *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987). Further, given that plaintiff did not file his complaint until after the statute of limitations had expired, the trial court did not abuse its discretion in denying his motion. The appointment of a medical expert could not have strengthened plaintiff's case because nothing an expert could offer would alter the expiration of the statute of limitations before the filing of plaintiff's complaint.

Affirmed.

/s/ Bill Schuette
/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra